

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. _____

(To be supplied by the court)

Sabir Shabazz

, Plaintiff

v.

Federal Bureau of Prisons (FBOP) or (BOP)

Case: 1:19-cv-01640

Assigned To : Unassigned

Assign. Date : 6/3/2019

Description: FOIA/Privacy Act (I-DECK)

_____, Defendant(s).

(List each named defendant on a separate line. If you cannot fit the names of all defendants in the space provided, please write "see attached" in the space above and attach an additional sheet of paper with the full list of names. The names listed in the above caption must be identical to those contained in Section B. Do not include addresses here.)

PRISONER COMPLAINT

NOTICE

Federal Rule of Civil Procedure 5.2 addresses the privacy and security concerns resulting from public access to electronic court files. Under this rule, papers filed with the court should not contain: an individual's full social security number or full birth date; the full name of a person known to be a minor; or a complete financial account number. A filing may include only: the last four digits of a social security number; the year of an individual's birth; a minor's initials; and the last four digits of a financial account number.

Plaintiff need not send exhibits, affidavits, grievances, witness statements, or any other materials to the Clerk's Office with this complaint.

A. PLAINTIFF INFORMATION

You must notify the court of any changes to your address where case-related papers may be served by filing a notice of change of address. Failure to keep a current address on file with the court may result in dismissal of your case.

Sabir Shabazz, Reg # 41119 086, USP (MAX) P.O. Box 8500, Florence, CO 81226-8500
(Name, prisoner identification number, and complete mailing address)

(Other names by which you have been known)

Indicate whether you are a prisoner or other confined person as follows: (check one)

- ____ Pretrial detainee
____ Civilly committed detainee
____ Immigration detainee
____ Convicted and sentenced state prisoner
☒ Convicted and sentenced federal prisoner
____ Other: (Please explain) _____

B. DEFENDANT(S) INFORMATION

Please list the following information for each defendant listed in the caption of the complaint. If more space is needed, use extra paper to provide the information requested. The additional pages regarding defendants should be labeled "B. DEFENDANT(S) INFORMATION."

Defendant 1: Federal Bureau of Prisons (FBOP) or (BOP)
(Name, job title, and complete mailing address)

At the time the claim(s) in this complaint arose, was this defendant acting under color of state or federal law? ☒ Yes ___ No (check one). Briefly explain:

The FBOP is the agency both ignoring and
refusing to reply with my FOIA request

Defendant 1 is being sued in his/her ___ individual and/or ☒ official capacity.

Defendant 2:

(Name, job title, and complete mailing address)

At the time the claim(s) in this complaint arose, was this defendant acting under color of state or federal law? ☐ Yes ☐ No (check one). Briefly explain:

Defendant 2 is being sued in his/her ____ individual and/or ____ official capacity.

Defendant 3:

(Name, job title, and complete mailing address)

At the time the claim(s) in this complaint arose, was this defendant acting under color of state or federal law? ☐ Yes ☐ No (check one). Briefly explain:

Defendant 3 is being sued in his/her ____ individual and/or ____ official capacity.

C. JURISDICTION

Indicate the federal legal basis for your claim(s): (check all that apply)

☐ 42 U.S.C. § 1983 (state, county, and municipal defendants)

☒ *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971)
(federal defendants)

☒ Other: (please identify) 5 U.S.C. § 552(a)(4)(B)

D. STATEMENT OF CLAIM(S)

State clearly and concisely every claim that you are asserting in this action. For each claim, specify the right that allegedly has been violated and state all facts that support your claim, including the date(s) on which the incident(s) occurred, the name(s) of the specific person(s) involved in each claim, and the specific facts that show how each person was involved in each claim. You do not need to cite specific legal cases to support your claim(s). If additional space is needed to describe any claim or to assert additional claims, use extra paper to continue that claim or to assert the additional claim(s). Please indicate that additional paper is attached and label the additional pages regarding the statement of claims as "D. STATEMENT OF CLAIMS."

CLAIM ONE: _____

Supporting facts:

Statement of Facts

1. The first request I submitted was received by the BOP October 16, 2018. The records requested: the approved menu recipes and product specifications for the BOP 2019 Certified Religious Diet menu, the Nutritional Analysis of this menu, and the available religious Certification Material with regard Certified Food Procedures.
2. The BOP responded with a notice of receipt October 16, 2018 and furnished 216 pages of records October 18, 2018.
3. I appealed their response. The 216 pages did not pertain to the Certified Religious Diet, rather they consisted of the BOP National Daily Offering Averages for every diet except the Certified Religious Diet, The National menu Nutrition facts, the National Menu Specifications Quote sheets, the BOP National menu Scaled Recipes, and the Certified Religious Diet menu for 2019 which FCC Florence's Food Service Department makes available to us already.
4. The Office of Information Policy (OIP) of the U.S. Department of Justice received my appeal November 11, 2018. The OIP finally responded April 1, 2019 with 19 additional pages. This consisted of Food Service Central Office Certified Food Component Procedures, another Certified Religious Diet Menu along with two Holiday menus and a blank Religious Diet Specifications Quote Sheet. See Exhibit 1 A "First Request"

E. PREVIOUS LAWSUITS

Have you ever filed a lawsuit, other than this lawsuit, in any federal or state court while you were incarcerated? ☐ Yes ☒ No (check one).

If your answer is "Yes," complete this section of the form. If you have filed more than one previous lawsuit, use additional paper to provide the requested information for each previous lawsuit. Please indicate that additional paper is attached and label the additional pages regarding previous lawsuits as "E. PREVIOUS LAWSUITS."

Name(s) of defendant(s): _____

Docket number and court: _____

Claims raised: _____

Disposition: (is the case still pending?
has it been dismissed?; was relief granted?) _____

Reasons for dismissal, if dismissed: _____

Result on appeal, if appealed: _____

F. ADMINISTRATIVE REMEDIES

WARNING: Prisoners must exhaust administrative remedies before filing an action in federal court regarding prison conditions. See 42 U.S.C. § 1997e(a). Your case may be dismissed or judgment entered against you if you have not exhausted administrative remedies.

Is there a formal grievance procedure at the institution in which you are confined?

☒ Yes ☐ No (check one)

Did you exhaust administrative remedies?

☐ Yes ☒ No (check one)

This action does not regard "prison conditions." Or rather does not assert constitutional claims with regard to "prison conditions" specifically.

G. REQUEST FOR RELIEF

State the relief you are requesting or what you want the court to do. If additional space is needed to identify the relief you are requesting, use extra paper to request relief. Please indicate that additional paper is attached and label the additional pages regarding relief as "G. REQUEST FOR RELIEF." Plaintiff respectfully request this Court

a) Enter a permanent injunction ordering Defendant to provide the following records: 1. The Nutrition Facts for the Certified Religious Diet Menu for 2019. 2. Chief Dietician, Mitchell Holladay's Nutritional Analysis Report for 2019 of the Certified Religious Diet Menu. 3. The American Correctional Association (ACA) standards that clarify how 4,107 mg of daily sodium is healthy. 4. FCC Florence's Trust Fund Food Service Budgetary reports for the present and last fiscal Quarters for 2019. 5. The name and contact information for the company FCC Florence's Food Service Department

H. PLAINTIFF'S SIGNATURE

See attachment
additional pages

I declare under penalty of perjury that I am the plaintiff in this action, that I have read this complaint, and that the information in this complaint is true and correct. See 28 U.S.C. § 1746; 18 U.S.C. § 1621.

Under Federal Rule of Civil Procedure 11, by signing below, I also certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending or modifying existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.


(Plaintiff's signature)

5/28/2019
(Date)

"D. Statement Of Claims."

5. The second request I submitted was received by the BOP November 30, 2018. It was assigned to the complex track and when nearly four months passed I sent a narrowed request to the BOP FOIA Public Liaison. To this day I have never received a notice of receipt for the narrowed request but a few days after I mailed it they did respond to the initial request with 58 pages of records they had already given me. Despite specifically requesting the Certified Religious Diet and National Menu Specifications Quote Sheets the Food Service Administrator (FSA) here at FCC Florence submitted the Fiscal Year of 2019 at that time, the BOP sent me blank Quote Sheets. See Exhibit 1 B
6. The third request I sent back in the first week of April 2019. The request consisted of the names and contact information for the companies FCC Florence's Food Service and Trust Fund Departments contract with to procure food for food service operations and halal food/non-food items for its Commissary Operations. To this day I have never received a notice of receipt or an assigned Request Number.
7. The fourth request I submitted May 14, 2019. It consisted of the total price for the Vitamin D (cholecalciferol) 1000 Unit Tab prescription given to me by Dr. Oba D., M.D. May 7, 2019.
8. That day I also sent an inquiry to the BOP FOIA Public Liaison, Mr. C. Darnell Stroble as to why I never received a Notice of receipt and request number for the third request

Legal Claims

9. The records I've requested are not specifically exempted from disclosure by statute. The information is in the

10. public interest and will contribute significantly to public understanding of the operations and activities of the BOP and FCC Florence Officials.
11. The BOP has refused to provide pertinent records related to its Certified Religious Diet and FCC Florence's Food Service; Trust Fund Department Operations.
12. The vital nature of records related to the BOP's Certified Religious Diet program is visible in the 2 out of 283 pages I received. The BOP National Certified Food Options Daily Offering Averages FY-2019 page says the Certified Religious Diet receives 4,107 mg of sodium per day.
13. In the Carr et al. v Samuels, former National Food Service Administrator, Karen Stiltnier, submitted a declaration. She says that approximately 2,010 inmates are enrolled in the Certified food component of the Alternative Diet Program. Of these inmates, 589 are Jewish and 991 are Muslim. What she does not say is the BOP's 10,685 Muslim inmate population is predominantly African American. Therefore this suggestion implies black people comprise the majority of inmates on the Certified Religious diet. See Exhibit 2 Chief Dietitian Mitchel Holliday's Declaration and page 4 of 12 from Karen Stiltnier's Declaration.
14. The 2015 Dietary Guidelines for Americans from the U.S. Department of Agriculture says the daily recommended intake (DRI) of sodium is 2300 mg and should be further reduced to 1,500 mg for those of any age who are African American.
15. A peer-reviewed Global Burden of Disease analysis published in the Lancet reported that 1 in 5 deaths tied to unhealthy eating habits. People didn't consume enough nuts, seeds, milk and whole grains according to data from 2017. Instead, they consumed too much processed meat, sodium and sugary drinks.
16. Absent the sugary drinks, this is a precise description of the Certified Religious Diet. The Kosher meals are pre-packaged, double wrapped, and delivered shelf-stable or frozen.

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17. The second page out of 283 pages vital to my request is a Memorandum Chief Dietician, Mitchel Holliday, sent to the current National Food Service Administrator (NFSA), Scott Abrams. The memo simply informs NFSA, Abrams, that Mr. Holliday completed the Nutritional Analysis with consideration to the Dietary Reference Intakes (DRIs).
18. The facts I have presented show this is obviously not true. Mr. Holliday continues to deliberately disregard daily nutrient intake levels estimated to meet the requirements of healthy individuals as mandated by American Correctional Association (ACA) standards and BOP policy related to protecting inmates health and quality of life by providing high quality meals that are nutritionally-sound, of high quality, varied and palatable to inmates. See Exhibit 2 Mr. Holliday's Declaration, paragraphs 6 and 8.
19. In Mr. Holliday's own words he explains how he conducts his Nutritional Analysis: "... I must personally review, evaluate and Nutritionally analyze each individual meal for nutritional content and sufficiency. As a result, I am required to have accurate, and as detailed information as possible about the contents of each meal by amount, ingredients, proteins, carbohydrates, sugars etc."
20. This reveals that Nutrition Facts are available for the Certified Religious Diet but the BOP sent me the Nutrition Facts for The National Regular, No-flesh, and Heart and Healthy diets instead. *id.* at paragraph 6.
21. Mr. Holliday also says "... I used the Nutrition Data System for Research - Nutritional Analysis Software - to conduct the dietary analysis of the Plaintiffs proposed menu, taking into consideration the applicable DRIs." *id.* at par. 6.
22. The BOP refuses to provide the Nutritional Analysis report. Instead they sent a Memorandum Mr. Holliday sent to NFSA, Abrams that he completed it.

BOP Ignoring FOIA Request

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23. The BOE has now began to ignore or refuse to acknowledge my request completely
24. 5 U.S.C. (2)(7)(A) Each agency shall -- establish a system to assign an individual tracking number for each request received that will take longer than ten days to process and provide to each person making a request the tracking number assigned to the request.
25. 5 U.S.C. (2)(6)(i) Each agency, upon any request for records made under paragraph (1)(2)(3) of this subsection, shall -- determine within 20 days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of any such request whether to comply with such request and shall immediately notify the person making such request of --
26. 5 U.S.C. (2)(C)(i) Any person making a request to any agency for records under paragraph (1)(2)(3) of this subsection shall be deemed to have exhausted his administrative remedies with respect to such request if the agency fails to comply with the applicable time limit provisions of this paragraph...

G.- Request For Relief

contracts with to procure food for its Food Service Operations.

2. 6. The name and contact information for the company FLC Florence's Trust Fund Department contracts with to procure the Halal food and Islamic non-food items for its Commissary program
3. 7. The total price for the Vitamin D (cholecalciferol) 1000 Unit Tab prescription given to me by Dr. Oba D., MD.
4. 8. The Scaled Recipes for the Certified Religious diet menu.